

Minutes

February 19, 2015

Memorandum 2015-7

Minutes of Meeting on February 12, 2015 (Draft)

The California Law Revision Commission¹ held a meeting on February 12, 2015. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert
Executive Director

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 12, 2015
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on February 12, 2015.

Commission:

Present: Victor King, Chairperson
Crystal Miller-O'Brien, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Assembly Member Ed Chau
Judge Patricia Cowett (Ret.)
Susan Duncan Lee

Absent: Damian Capozzola
Xochitl Carrion
Taras Kihiczak

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

Bryanna Brandalesi, UC Davis School of Law
Stephen Carlson, CTIA - The Wireless Association
Lawrence Doyle, Conference of California Bar Associations
James Ewert, California Newspaper Publishers Association
Daniel Felizzatto, Los Angeles County District Attorney's Office
Robert Flack
Jeff Glasser, Los Angeles Times
Donna Hoffman, Los Angeles County District Attorney's Office
Ron Kelly
James R. Madison, California Dispute Resolution Council
Philip Marshall, Los Angeles County District Attorney's Office
Michael Minkus, California Public Utilities Commission
Nicole Moon, California Newspaper Publishers Association
Everett Monroe
Daniel Pone, Judicial Council

Nathaniel Sterling
Harold Thomas, Butte County District Attorney's Office
John S. Warnloff, California Dispute Resolution Council

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MINUTES OF OCTOBER 30, 2014, COMMISSION MEETING

Memorandum 2014-39 presented a draft of the Minutes of the October 30, 2014, Commission meeting. The Commission approved the Minutes without change.

ADMINISTRATIVE MATTERS

Recognition of Nathaniel Sterling

The Commission formally recognized, honored, and thanked Nathaniel Sterling for his generous contributions to a charitable fund that he created to provide financial support to King Hall Law School students who work for the Commission. The Commission noted the significant value that the Commission has received from such work and the important educational benefit that it provides for King Hall students.

Report of Executive Director

The Executive Director reported on the following matters:

- On February 27, 2015, the Executive Director and the Commission will be honored for their work on the recodification of the Davis-Stirling Common Interest Development Act.
- The terms of Commissioners Carrion, Cowett, King, and Lee will be ending on October 1, 2015.

- The staff has implemented an accrued vacation reduction plan, which will slightly reduce staff resources.

The Commission also discussed the following administrative matters:

- Commissioner King noted that a member of the public was being allowed to participate in the meeting telephonically, as an experimental accommodation. He emphasized that this was not intended to establish a precedent. Such accommodations will be considered on a case-by-case basis in the future.
- The Commission welcomed a new member, Assembly Member Ed Chau.

Commission Practices

The Commission considered Memorandum 2015-1, discussing the Commission's practices. The Commission did not make any change to its practices. The Chair noted that any member may raise issues relating to Commission practices at any meeting, as part of the discussion of administrative matters.

New Topics and Priorities

The Commission considered Memorandum 2014-41 and its First and Second Supplements, and Memorandum 2014-53 and its First Supplement, discussing the Commission's current program of work and possible work priorities for 2015.

The Commission approved the priority scheme summarized on page 34 of Memorandum 2014-41.

The Commission authorized the staff to assist the Legislature with two bills:

- AB 139 (Gatto), which would implement the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).
- If introduced, an Assembly bill that would implement the Commission's recommendation on *Common Interest Development Ombudsperson*, 35 Cal. L. Revision Comm'n Reports 123 (2005).

Annual Report

The Commission considered Memorandum 2014-54 and its First Supplement, presenting a staff draft of the 2014-15 Annual Report and a draft appendix that contains Commissioner biographies.

With the following changes, the Commission approved the staff draft and appendix as the Commission's 2014-15 Annual Report:

- 1 • All shading in the staff draft will be removed.
- 2 • The date and letterhead of the transmittal letter in the report will
- 3 be revised to reflect the date of approval of the Annual Report, and
- 4 the composition of the Commission on that date.
- 5 • The transmittal letter in the report will be revised to delete a
- 6 reference to a Commission meeting in Oakland, California.
- 7 • The biography of former Commissioner Roger Dickinson will be
- 8 added to the appendix of biographies to be included in the 2014-15
- 9 Annual Report.
- 10 • The heading of the appendix of Commissioner biographies will be
- 11 revised to indicate that the appendix contains the biographies of
- 12 all persons serving as Commissioners in 2014.
- 13 • The biography of Commissioner Miller-O'Brien in the appendix of
- 14 biographies will be revised as requested by Commissioner Miller-
- 15 O'Brien.

16 The Commission also decided that, going forward, the body and appendices
17 of each year's Annual Report should reflect the service of all Commissioners who
18 served in the year described by the report, while the letterhead of the transmittal
19 letter in the report should identify the Commissioners serving on the date of the
20 transmittal letter.

21 STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER
22 INFORMATION FROM COMMUNICATION SERVICES PROVIDERS

23 The Commission considered Memorandum 2014-55 and its First Supplement,
24 discussing California privacy statutes, and Memorandum 2015-3 and its First,
25 Second, and Third Supplements, discussing the general statutory objectives of
26 the study.

27 The Commission decided that the next step in the study will be to prepare a
28 draft tentative report that describes its findings regarding the requirements of
29 federal and state constitutional and statutory law. The report will not include
30 any reform recommendations or proposed legislation. On approval by the
31 Commission, the tentative report will be circulated for public comment. After
32 consideration of public comment, a final version of the report will be approved
33 for submission to the Legislature and Governor.

34 The Commission will postpone further work on proposed legislation in this
35 study until after the end of the legislative year. In the interim, the Commission
36 will study another topic that was assigned by Senate Concurrent Resolution 54
37 (Padilla) (2013), the law on government interruption of communication services.

1 STUDY J-1314 — TRIAL COURT UNIFICATION: PUBLICATION OF LEGAL NOTICE

2 The Commission considered Memorandum 2014-56 and its First Supplement,
3 discussing the written comments received on the tentative recommendation, the
4 determinability of judicial district boundaries used for notice publication, and
5 the options for moving forward with this study. In addition, the Commission
6 considered Memorandum 2015-2, presenting the “City Plus” model as a potential
7 reform approach.

8 The Commission directed the staff to prepare a draft proposal based on the
9 “City Plus” model. In doing so, the staff should make sure that the proposed
10 legislation does not have any inadvertent effect on elections.

11 STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND
12 ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

13 The Commission considered Memorandum 2014-58 (further discussion of
14 federal law), Memorandum 2014-59 (additional comments on miscellaneous
15 other states), Memorandum 2014-60 and its First and Second Supplements
16 (public comment), and Memorandum 2015-6 (data from early mediation pilot
17 programs).

18 The Commission also considered a comment from Bill Chan submitted to the
19 staff by email shortly before the meeting, and a document that Ron Kelly
20 provided at the meeting. Those communications are attached to the Third
21 Supplement to Memorandum 2014-60.

22 Memorandum 2015-4 (further discussion of California law) and
23 Memorandum 2015-5 (empirical data) were listed in the final agenda, but they
24 were not prepared for, or considered at, this meeting. Memoranda addressing
25 those topics will be presented at a future Commission meeting. The staff
26 reported that it anticipates completing the background work for this study by the
27 April meeting or the June meeting. The Commission will then begin to evaluate
28 different options and prepare a tentative recommendation.

29 The Commission discussed its position on having an interested person use
30 Commission materials in soliciting input for this study. The Commission does
31 not object if an interested person solicits input for this study, nor does it request
32 that anyone undertake such an effort. If an interested person wants to use
33 Commission materials in soliciting input, they are welcome to do so, but the
34 Commission would prefer that the person present those materials in full, or

1 provide a link to the materials. The Commission would particularly appreciate
2 inclusion of the information provided on page 4 of Memorandum 2014-60,
3 regarding presentation of information in hypothetical terms, rather than
4 disclosing actual identities or other details that may reveal such identities. The
5 Commission reserves the right to redact such details if they are included in a
6 comment.

7 No other Commission action was required or taken.

8 STUDY R-100 — FISH AND GAME LAW

9 The Commission considered Memorandum 2014-57 and its First, Second, and
10 Third Supplements, presenting a staff draft recommendation on *Fish and Game*
11 *Law: Technical Revisions and Minor Substantive Improvements (Part 1)*.

12 With the following changes, and any necessary conforming revisions, the
13 Commission approved the staff draft as a final recommendation:

- 14 • The revisions and Comment language appearing on pages 3-5 of
15 Memorandum 2014-57, relating to parts of animals, should be
16 incorporated in the recommendation.
- 17 • The Comment language appearing on page 7 of Memorandum
18 2014-57, relating to amphibians, should be added to the Comments
19 for Fish and Game Code Sections 240, 1000, 1003, 1245, 2000, and
20 13220.
- 21 • The Comment to Fish and Game Code Section 2003 appearing on
22 page 28 of the Exhibit to Memorandum 2014-57 is approved.
- 23 • The Comment language appearing on page 10 of Memorandum
24 2014-57 should be added to the Comment for Fish and Game Code
25 Section 1003.
- 26 • Fish and Game Code Sections 2014, 3005, 3008, and 7707 should be
27 withdrawn from the recommendation for further study.
- 28 • The definition of “wildlife” should be relocated as proposed on
29 pages 8-10 of the Second Supplement to Memorandum 2014-57.
- 30 • The words “and the justice of the peace court” should not be
31 deleted from Fish and Game Section 716.3(g).
- 32 • All revisions proposed in the Third Supplement to Memorandum
33 2014-57 should be incorporated in the recommendation.

- 1 In addition, the Commission decided to examine the use of the word “game”
2 as a modifier in the Fish and Game Code, to see whether that usage could be
3 improved.

☐ APPROVED AS SUBMITTED

Date

☐ APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Director